

# CLAUSEN & MOORE

L A W F I R M

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March 4, 2014

Dear Justices:

I am writing in support of Petition R-13-0044 and the proposed change to Rules 67(d) and (f) submitted by the Arizona Association.

Rules 67(d) and (f) impose arbitrary financial requirements on certain litigants, specifically plaintiffs without the means to post a cost bond in trial court. Under these rules a defendant can obtain dismissal of an action, solely on the basis that a plaintiff does not own property in Arizona and does not have the means to post a cost bond. The dismissal is not based on the merits of plaintiff's case. Because these rules can, under the right set of circumstances prevent a plaintiff from pursuing a meritorious claim in court, they infringe upon an individual's fundamental constitutional right to access to the courts. Further, filing a motion for cost bond can have a chilling effect on a plaintiff with limited means. It is a means of discrimination that has no place in our court system.

Although for many years most attorneys and judges recognized that the cost bond rules are fundamentally unfair, the use of this mechanism to prevent plaintiffs from pursuing meritorious claims has become more prominent recently, particularly in light of the opinion in *Thiele v. City of Phoenix*, 232 Ariz. 40, 301 P.3d 206 (App. 2013), Petition for Review denied on January 7, 2014, which overruled constitutional objections made by a *pro per* litigant.

I respectfully ask the Court to eliminate this one-sided, discriminatory rule.

Sincerely,

CLAUSEN AND MOORE LAW FIRM



Darren M. Clausen

DMC/bmw